

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Keyne Jean Villert	Team: Team # 3	CCRB Case #: 201300981	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/15/2013 3:15 PM	Location of Incident: Intersection of Burnside Avenue and Morris Avenue, and inside the 46th Precinct stationhouse	Precinct: 46	18 Mo. SOL 7/15/2014	EO SOL 7/15/2014	
Date/Time CV Reported Thu, 01/17/2013 1:01 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/14/2013 8:38 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Francis Bryant	00370	927980	046 PCT
2. POM Elisha Duncan	03073	926793	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Charlie Little	28363	938863	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Elisha Duncan	Abuse: At Burnside Avenue and Morris Avenue in the Bronx Officer Elisha Duncan stopped § 87(2)(b) and § 87(2)(b)	
B.SGT Francis Bryant	Abuse: At Burnside Avenue and Morris Avenue in the Bronx Sergeant Francis Bryant supervised the search of the car in which § 87(2)(b) was an occupant.	
C.POM Elisha Duncan	Abuse: En route to the 46th Precinct stationhouse, Officer Elisha Duncan threatened to arrest § 87(2)(b)	
D.SGT Francis Bryant	Discourtesy: En route to the 46th Precinct stationhouse, Sergeant Francis Bryant spoke rudely to § 87(2)(b)	
E.SGT Francis Bryant	Abuse: At the 46th Precinct stationhouse, Sergeant Francis Bryant authorized the strip-search of § 87(2)(b)	
F.POM Elisha Duncan	Discourtesy: At the 46th Precinct stationhouse, Officer Elisha Duncan spoke rudely to § 87(2)(b)	

## Case Summary

On January 17, 2013, § 87(2)(b) filed this complaint on behalf of himself and his friend, § 87(2)(b) with the Internal Affairs Bureau (IAB) via telephone, generating IAB log number 2013-2527 (encl. E1-E2). On February 14, 2013, the Civilian Complaint Review Board (CCRB) received this complaint.

On January 15, 2013, at approximately 3:15 p.m., § 87(2)(b) and § 87(2)(b) were standing by § 87(2)(b)'s car, on Burnside Avenue and Morris Avenue in the Bronx, when Sergeant Francis Bryant, Officer Elisha Duncan, and Officer Charlie Little, each assigned to the 46<sup>th</sup> Precinct, approached them. The following allegations resulted:

- **Allegation A – Abuse of Authority: At Burnside Avenue and Morris Avenue in the Bronx, Officer Elisha Duncan stopped § 87(2)(b) and § 87(2)(b)**  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation B – Abuse of Authority: At Burnside Avenue and Morris Avenue in the Bronx, Sergeant Francis Bryant supervised the search of the car in which § 87(2)(b) was an occupant.**  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation C – Abuse of Authority: En route to the 46<sup>th</sup> Precinct stationhouse, Officer Elisha Duncan threatened to arrest § 87(2)(b)**
- **Allegation D – Discourtesy: En route to the 46<sup>th</sup> Precinct stationhouse, Sergeant Francis Bryant spoke rudely to § 87(2)(b)**
- **Allegation F – Discourtesy: At the 46<sup>th</sup> Precinct stationhouse, Officer Elisha Duncan spoke rudely to § 87(2)(b)**  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation E – Abuse of Authority: At the 46<sup>th</sup> Precinct stationhouse, Sergeant Francis Bryant authorized the strip-search of § 87(2)(b)**  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

## Results of Investigation

### Civilian Statement

**Complainant/Victim:** § 87(2)(b)

- § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

### **CCRB Testimony**

On March 11, 2013, § 87(2)(b) was interviewed at the CCRB (encl. F1-F3). His statement is summarized below.

On January 15, 2013, at approximately 3:15 p.m., § 87(2)(b) was standing by his parked car, on Burnside Avenue and Morris Avenue in the Bronx, while having a conversation with his friend, § 87(2)(b). § 87(2)(b) was standing on the sidewalk, within arm's reach of § 87(2)(b). § 87(2)(b) had slightly opened his trunk because he wanted to show something to § 87(2)(b). § 87(2)(b) did not recall what he wanted to show § 87(2)(b) but he stated that his trunk only contained jumper cables, a spray can, and a pack of tissue, at the time. § 87(2)(b) denied having marijuana on his person, or inside his car. At no point did § 87(2)(b) make physical contact or exchange any items with § 87(2)(b).

At some point, an unmarked patrol car containing three officers dressed in plainclothes, identified via investigation as Sergeant Francis Bryant, Officer Elisha Duncan, and Officer Charlie Little, each assigned to the 46<sup>th</sup> Precinct, came to a screeching halt next to § 87(2)(b)'s car.

Officer Duncan exited the vehicle, approached § 87(2)(b), grabbed him, told him to put his hands on a nearby car, and entered his pockets. § 87(2)(b) had \$290 in cash in his pockets at the time, which Officer Duncan placed on top of the car before handcuffing him. Officer Duncan did not find any other items on § 87(2)(b). § 87(2)(b)'s car keys were inside his car. Sergeant Bryant and Officer Little were both standing by § 87(2)(b)'s car and § 87(2)(b) during this interaction. § 87(2)(b) recognized Officer Duncan and Sergeant Bryant from previous interactions.

Officer Little entered § 87(2)(b)'s pockets and did not retrieve any items from him. Officer Duncan then entered § 87(2)(b)'s pockets and recovered \$300 in cash and a pack of cigarettes containing four bags of marijuana.

Officer Duncan then entered and searched the front of § 87(2)(b)'s car, going into the glove compartment, while Sergeant Bryant and Officer Little searched the back. Thereafter, all three officers searched the trunk, resulting in Officer Duncan finding a nickel bag of marijuana. § 87(2)(b) denied ownership of the marijuana, stating that § 87(2)(b) must have placed it inside his trunk upon seeing the officers. § 87(2)(b) did not see the bag prior to the officers searching his car.

Soon after, an unmarked patrol van containing three unidentified officers, whom § 87(2)(b) could not describe, arrived at the scene. One of the unidentified officers proceeded to search through his trunk, but did not retrieve anything from it.

§ 87(2)(b) was then taken to the patrol van with the three unidentified officers, and § 87(2)(b) was taken to the patrol car with Officer Duncan, Sergeant Bryant, and Officer Little.

While inside the patrol car, Officer Duncan stated to § 87(2)(b) that he would arrest him every time he sees him. Sergeant Bryant also stated, "Give me your wife's number again because I'm going to tell her that I'm going to fuck her," and, "You know my dick is bigger than yours. You know what I'm going to do." (A spinoff was sent to IAB under case number § 87(2)(b) to address the nature of these alleged remarks).

At the 46<sup>th</sup> Precinct stationhouse, Officer Duncan took § 87(2)(b) to the bathroom and conducted a strip-search. Nothing was recovered as a result of the strip-search. After the strip-search was over, Officer Duncan escorted § 87(2)(b) to and placed him in a holding cell.

At some point later, Officer Duncan came to the holding cell and stated, "I'll tell you what I'm going to do. I'm going to be a fucking ass. I'm impounding your car where you'll never get it back." § 87(2)(b) did not know if any other officers were present at the time. § 87(2)(b) was not held in the same area of the stationhouse as § 87(2)(b) nor did he know if anyone else was held inside the holding pen with him.

### **Attempts to contact § 87(2)(b)**

Between March 14, 2013, and May 13, 2013, the undersigned investigator made five call attempts and sent two please-call letters to § 87(2)(b) at his telephone number and address on record. § 87(2)(b) provided the undersigned investigator with § 87(2)(b)'s number, and his address was retrieved from his arrest report (encl. G6). The undersigned investigator left voicemails on two of the aforementioned call attempts. On one attempt, an individual answered the phone and hung it up without speaking. On the last two attempts, the number did not accept incoming calls. Neither of the two please-call letters was returned by the United States Postal Service (USPS).

On May 10, 2013, the undersigned investigator conducted a New York State Department of Motor Vehicles (DMV), WhitePages, and Lexis-Search search (encl. T2-T17). The DMV search confirmed § 87(2)(b)'s address on record. Neither the WhitePages nor Lexis-Nexis searches confirmed § 87(2)(b)'s contact information. A Complaint Tracking System search yielded negative results for previous complaints filed by § 87(2)(b) (encl. C2).

To date, § 87(2)(b) has failed to contact the undersigned investigator. A search of the New York City Department of Correction Inmate Tracking System website on May 13, 2013, revealed that § 87(2)(b) is not currently incarcerated nor was he incarcerated during the time period the undersigned investigator attempted to contact him (encl. T1)

### **NYPD Statements:**

#### **Subject Officer: OFFICER ELISHA DUNCAN**

- *Officer Duncan was § 87(2)(b) old on the date of the incident. He is a black man, is 5'6" tall, weighs 175 pounds, and has black hair and brown eyes.*
- *On January 15, 2013, Officer Duncan, of the 46<sup>th</sup> Precinct, was assigned to Anti-Crime. Officer Duncan was dressed in plainclothes and was partnered with Officer Charlie Little and Sergeant Francis Bryant in an unmarked patrol car. Officer Duncan worked from 9:30 a.m. to 6:05 p.m.*

#### **Memo Book Entries**

At 3:15 p.m., two individuals were arrested on Morris Avenue and East Burnside Avenue. At 3:27 p.m., Sergeant Bryant authorized a strip-search (encl. H).

#### **Criminal Complaint and Arrest Reports**

The criminal complaint and arrest reports related to § 87(2)(b)'s and § 87(2)(b)'s arrests (encl. G1-G8), completed by Officer Duncan, indicate that at the time and place of occurrence, § 87(2)(b) was observed passing a small object to § 87(2)(b) in exchange for U.S. dollar currency. Sergeant Bryant authorized the strip-search of § 87(2)(b). As a result of the arrests, marijuana and \$290 in cash were vouchered as evidence, and § 87(2)(b)'s vehicle was impounded.

#### **CCRB Testimony**

On April 5, 2013, Officer Duncan was interviewed at the CCRB (encl. J1-J3). His statement is summarized below:

On January 15, 2013, at approximately 3:15 p.m., Officer Duncan was seated inside an unmarked patrol car with Sergeant Bryant and Officer Little. Officer Duncan did not remember who was driving the car, nor where each officer was seated. As the officers were slowly cruising down the street, in the vicinity of Morris Avenue and East Burnside Avenue in the Bronx, Officer

Duncan observed § 87(2)(b) and § 87(2)(b) standing by a car with a fully open trunk. The officers were driving on the same side of the street as § 87(2)(b) and § 87(2)(b) at the time of the observation. When Officer Duncan first observed the individuals, the patrol car was approximately five feet from them.

Officer Duncan then saw § 87(2)(b) whom he recognized from previous arrests, reaching inside the open trunk. After a few seconds, § 87(2)(b) pulled out a small object from the trunk. § 87(2)(b) then passed the object to § 87(2)(b) in exchange for cash. During the exchange, Officer Duncan noticed that the small object he had observed was actually a clear Ziploc plastic bag, about the size of a “dime bag,” containing loose marijuana. The exchange lasted for a few seconds, and Officer Duncan’s view of § 87(2)(b) and § 87(2)(b) was not obstructed at the time. Officer Duncan further stated that the area is known for being a drug-prone location. Officer Duncan did not see anyone other than § 87(2)(b) reach into the trunk during or after the hand-to-hand exchange.

Officer Duncan informed Officer Little and Sergeant Bryant of his observation, and the officers immediately stopped the patrol car. The officers then exited the vehicle and approached § 87(2)(b) and § 87(2)(b). Upon approaching § 87(2)(b) Officer Duncan immediately smelled the odor of marijuana coming from him. The officers then handcuffed and searched both individuals. Cash was found on § 87(2)(b) and a bag of marijuana was recovered from § 87(2)(b).

Soon after, Officer Duncan looked inside § 87(2)(b)’s trunk, which was still wide open, and only saw a roll of paper towels inside. Officer Duncan did not remember closely examining nor touching any parts of the trunk at the arrest location, nor did he remember seeing anyone do so.

At some point, the officers made a call for a transport unit to come pick up § 87(2)(b) and § 87(2)(b). Officer Duncan stated that he occasionally uses his cell phone to call for additional units, but that he did not remember doing so on this particular occasion. Multiple officers subsequently arrived at the arrest location, and an officer did a protective sweep of the front of the car prior to driving it to the 46<sup>th</sup> Precinct stationhouse. Officer Duncan did not know which officer drove the car to the stationhouse, nor who transported § 87(2)(b) and § 87(2)(b). Officer Duncan did not enter § 87(2)(b)’s car at the arrest location.

Officer Duncan stated that no additional narcotics were found at the arrest location. The individuals and § 87(2)(b)’s car were then taken to the stationhouse. Officer Duncan did not remember which patrol car he was seated in on the way to the stationhouse, nor did he remember transporting either of the individuals.

At the stationhouse, Officer Duncan searched § 87(2)(b) an additional time, at the desk. Nothing was recovered from this search. Officer Duncan and Sergeant Bryant then conducted a strip-search of § 87(2)(b) inside the bathroom. Sergeant Bryant authorized the strip-search because the officers could still smell a strong odor of marijuana coming from § 87(2)(b). Nothing was recovered during the strip-search. § 87(2)(b) was then placed into a holding cell.

Later, Officer Duncan conducted an inventory of § 87(2)(b)’s vehicle and recovered two additional bags of marijuana inside a paper towel roll, inside the trunk. No additional contraband was found.

Officer Duncan did not say, nor hear any officers say, “I’m going to fuck her,” “You know my dick is bigger than yours,” “I’m going to arrest you every time I see you,” “I’m going to be a fucking ass,” or any other statements to that effect at any point during the incident.

**Subject Officer: SERGEANT FRANCIS BRYANT**

- *Sergeant Bryant was § 87(2)(b) old on the date of the incident. He is a black man, is 6'3" tall, weighs 240 pounds, is bald headed, and has brown eyes.*
- *On January 15, 2013, Sergeant Bryant, of the 46<sup>th</sup> Precinct, worked the same tour and assignment as Officer Duncan.*

**Memo Book Entries**

At 3:20 p.m., Sergeant Bryant verified the arrest of two individuals made by Officer Duncan on Morris Avenue and East Burnside Avenue (encl. K1-K3).

**CCRB Testimony**

On April 5, 2013, Sergeant Bryant was interviewed at the CCRB (encl. M1-M3). § 87(2)(g)

Sergeant Bryant confirmed that the patrol car was slowly cruising down the street, in the vicinity of Morris Avenue and East Burnside Avenue, when Officer Duncan mentioned his observation of a hand-to-hand drug exchange. Officer Duncan did not specify what drug had been exchanged. Sergeant Bryant confirmed seeing § 87(2)(b) and § 87(2)(b) standing within arm's reach of each other, by an open trunk, but he did not witness the exchange. Sergeant Bryant did not see either individuals reach into the trunk.

Sergeant Bryant confirmed that the patrol car was on the same side of the street as the individuals, about half a car's length away, and that nothing was obstructing his view. Sergeant Bryant did not observe either individuals in possession of any contraband upon approaching them, but he confirmed smelling the odor of marijuana coming from them.

Both § 87(2)(b) and § 87(2)(b) were handcuffed then searched, and the officers found a bag containing loose marijuana on one of the individuals. At some point, a transport unit arrived at the scene and transported both § 87(2)(b) and § 87(2)(b) to the 46<sup>th</sup> Precinct stationhouse. Sergeant Bryant did not remember which officers were part of the transport unit.

One of the officers performed a visual sweep of the open trunk and the front areas prior to the car being taken to the stationhouse. Sergeant did not know of any officers, including himself, entering any parts of the car other than the front compartment. No additional contraband had been recovered at that point.

At the stationhouse, Officer Duncan informed Sergeant Bryant that § 87(2)(b) still smelled like marijuana and that he believed that he had additional contraband on his person. Sergeant Bryant authorized and supervised the strip-search of § 87(2)(b) performed by Officer Duncan. No additional contraband was recovered during the strip-search. An inventory search of § 87(2)(b)'s vehicle was conducted and marijuana was found inside its trunk.

Sergeant Bryant did not say, nor hear any officers say, "I'm going to fuck her," "You know my dick is bigger than yours," "I'm going to arrest you every time I see you," "I'm going to be a fucking ass," or any other statements of that effect at any point during the incident.

**Witness Officer: OFFICER CHARLIE LITTLE**

- *Officer Little was § 87(2)(b) old on the date of the incident. He is a black man, is 6' tall, weighs 260 pounds, is bald headed, and has brown eyes.*
- *On January 15, 2013, Officer Little, of the 46<sup>th</sup> Precinct, worked the same tour and assignment as Officer Duncan and Sergeant Bryant.*

**Memo Book Entries**

At 3:30 p.m., one individual was arrested at the corner of East Burnside Avenue and Morris Avenue for the sale of marijuana (encl. N1-N2).

**CCRB Testimony**

On April 17, 2013, Officer Little was interviewed at the CCRB (encl. O1-O3). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

At some point, Officer Duncan stated that he had observed a hand-to-hand transaction between § 87(2)(b) and § 87(2)(b). Officer Duncan did not specify what drug had been exchanged. Officer Little then looked up and saw § 87(2)(b) and § 87(2)(b) standing a few inches apart from each other, by a wide open trunk. § 87(2)(b) had one of his hands on the opened trunk door and was leaning his head inside the trunk compartment. Officer Little did not see either § 87(2)(b) or § 87(2)(b) reach inside the trunk. Officer Little did not observe the transaction, nor did he see § 87(2)(b) and § 87(2)(b) make physical contact. Officer Little did not remember seeing the individuals holding any items in their hands. Nothing was obstructing Officer Little's view at the time of this observation.

After § 87(2)(b) and § 87(2)(b) were handcuffed and searched, a transport unit consisting of unidentified officers arrived. At some point during the incident, officers entered the car and retrieved marijuana from it. Officer Little did not know which officers entered the car, nor where the marijuana was found. Officer Little did not enter the vehicle.

Officer Duncan and Officer Little then transported one of the individuals inside their patrol car, to the 46<sup>th</sup> Precinct stationhouse, while the other one was transported by the transport unit. Officer Little did not remember which of the two arrestees they transported.

At the stationhouse, Officer Little escorted the transported individual to the desk. Officer Little did not search § 87(2)(b)'s car, nor was he aware of any additional contraband being recovered.

Officer Little did not hear any officers say, "I'm going to fuck her," "You know my dick is bigger than yours," "I'm going to arrest you every time I see you," "I'm going to be a fucking ass," or any other statements of that effect at any point during the incident.

**NYPD Documents**

**Attempt to Obtain SPRINT Report**

On March 11, 2013, the undersigned investigator received from the NYPD Monitoring and Analysis Section (MAS) the SPRINT index for the 46<sup>th</sup> Precinct from the date of the incident. None of the entries listed on the index match the incident related to this complaint (encl. P1-P2).

Officer Duncan stated during his CCRB interview that he sometimes calls for additional units using his cell phone, § 87(2)(g)

§ 87(2)(g)

**Attempt to Obtain Command Log, Prisoner Holding Pen Roster, and Property Vouchers**

On March 13, 2013, the undersigned investigator sent a request for the 46<sup>th</sup> Precinct Command Log and Prisoner Holding Pen Roster from the date of the incident to IAB. On the same date, the investigator also sent a request for the property vouchers filed as a result of this incident to IAB (encl. V16-17).

As of June 3, 2013, the undersigned investigator has not obtained a copy of the aforementioned documents.

Although the property vouchers have not been received yet, the arrest reports for § 87(2)(b) and § 87(2)(b) related to this incident indicate that vouchers were indeed filed. Property voucher invoices, attributed to § 87(2)(b) were filed for marijuana, cash, and a car. A property voucher, attributed to § 87(2)(b) was filed for marijuana.

**Arrests for Incident and Disposition**

- § 87(2)(b), § 87(2)(c) [REDACTED]
- § 87(2)(b), § 87(2)(c) [REDACTED]

**Status of Civil Proceedings**

- As of May 15, 2013, roughly a month following the expiration of the 90-day filing deadline, § 87(2)(b) had not filed a Notice of Claim with the City of New York with regards to the incident (encl. R1).
- As of June 10, 2013, roughly two months following the expiration of the 90-day filing deadline, § 87(2)(b) had not filed a Notice of Claim with the City of New York with regards to the incident (encl. R2).

**Civilians Criminal History**

- § 87(2)(b), § 87(2)(c) [REDACTED]
- [REDACTED]
- [REDACTED]

**Civilians CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (encl. C1).
- § 87(2)(b) has not previously filed a complaint with the CCRB (encl. C2).

**Subject Officers CCRB History**

- Sergeant Bryant has been a member of the service for 11 years. There are four substantiated CCRB allegations (encl. B5-B6) against him:
  - In CCRB case number 200910870, the allegation that Sergeant Bryant abused his authority against a civilian was substantiated against him. The CCRB



- recommended for Sergeant Bryant to receive a command discipline as a result of this allegation. Sergeant Bryant eventually received instructions from the NYPD.
- In CCRB case number 201103380, the allegation that Sergeant Bryant abused his authority against a civilian was substantiated against him. The CCRB recommended for Sergeant Bryant to receive charges as a result of this allegation. Sergeant Bryant eventually received a command discipline from the NYPD.
  - In CCRB case number 201107167, the allegations that Sergeant Bryant abused his authority against a civilian were substantiated against him. The CCRB recommended for Sergeant Bryant to receive charges as a result of these allegations. Sergeant Bryant did not receive any penalty from the NYPD.
- Officer Duncan has been a member of the service for 12 years and there is one substantiated CCRB allegation (encl. B1-B4) against him:
    - In CCRB case number 200910870, the allegation that Officer Duncan was discourteous towards a civilian was substantiated against him. The CCRB recommended for Officer Duncan to receive a command discipline as a result of this allegation. Officer Duncan eventually received instructions from the NYPD.

## **Conclusion**

### **Identification of Subject Officers**

§ 87(2)(b) recognized Sergeant Bryant and Officer Duncan, from previous incidents during which he was arrested, as they were exiting the patrol car. § 87(2)(b) identified Sergeant Bryant and Officer Duncan by name from the paperwork he was given after his release, and reading Officer Duncan's nameplate. § 87(2)(b) also provided a physical description of Sergeant Bryant and Officer Duncan which closely match their pedigree information.

Officer Duncan acknowledged making the observation of the drug transaction, initiating contact with § 87(2)(b) and arresting § 87(2)(b) and § 87(2)(b). Sergeant Bryant acknowledged being inside the patrol car with Officer Duncan when the observation of the drug transaction was made, and supervising the arrests of § 87(2)(b) and § 87(2)(b). Sergeant Bryant and Officer Duncan added that they have been involved with multiple arrests of § 87(2)(b) prior to this incident.

§ 87(2)(b) further stated that two of the officers who initially approached him and § 87(2)(b) whom he recognized as being Sergeant Bryant and Officer Duncan, also transported him to the 46<sup>th</sup> Precinct stationhouse.

§ 87(2)(g)

§ 87(2)(g)

### **Investigative Findings and Recommendations**

#### **Allegations Not Pleased**

§ 87(2)(g)

**Allegation A – Abuse of Authority: At Burnside Avenue and Morris Avenue in the Bronx, Officer Elisha Duncan stopped § 87(2)(b) and § 87(2)(b)**

All statements were consistent in that § 87(2)(b) and § 87(2)(b) were standing next to each other, by an open trunk.

§ 87(2)(b) stated that while conversing with § 87(2)(b) he opened his trunk to show him an item he could not describe during his CCRB interview. Sergeant Bryant, Officer Duncan, and Officer Little, whom he recognized from previous interactions, then exited their unmarked patrol car, and approached them. The officers subsequently searched and handcuffed him and § 87(2)(b). As a result of the search, the officers found \$290 in cash on § 87(2)(b) and a pack of cigarettes containing four bags of marijuana and \$300 in cash on § 87(2)(b).

Officer Duncan stated that, while inside a drug-prone area, he observed § 87(2)(b) reaching into the trunk, retrieving a small object from it, and exchanging it with § 87(2)(b) for cash. Officer Duncan further added that, as the individuals were conducting the hand-to-hand exchange, he distinguished the small object to be a bag of marijuana.

Sergeant Bryant and Officer Little both corroborated that Officer Duncan informed them of his observation of a drug exchange between § 87(2)(b) and § 87(2)(b). Neither officers witnessed the exchange, but Officer Little testified to seeing § 87(2)(b) leaning his head and looking inside the trunk. Additionally Officer Duncan and Sergeant Bryant both testified to smelling the distinctive odor of marijuana coming from the individuals' location upon approaching them.

As mentioned above, the arrest reports for § 87(2)(b) and § 87(2)(b) related to this incident indicate that property vouchers for marijuana were filed for both § 87(2)(b) and § 87(2)(b).

§ 87(2)(b)

According to People v. Jones, 90 N.Y.2d 835, the exchange of currency for an unidentified object in a drug-prone location that is observed by an experienced officer is sufficient to give probable cause that a narcotics transaction has occurred (encl. A1-A2).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Abuse of Authority: At Burnside Avenue and Morris Avenue in the Bronx, Sergeant Francis Bryant supervised the search of the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b) admitted to wanting to show § 87(2)(b) an item, kept inside his trunk, which he could not describe. However, § 87(2)(b) stated that his trunk only contained jumper cables, a spray can, and a pack of tissue.

§ 87(2)(b) also admitted that, at the time the officers were approaching him and § 87(2)(b) his open trunk contained marijuana in plain view. § 87(2)(b) speculated that § 87(2)(b) had thrown the marijuana inside it.

§ 87(2)(b) alleged that, after having been handcuffed, multiple officers then entered and searched his vehicle, and found the marijuana inside his open trunk.

Officer Duncan testified to observing § 87(2)(b) retrieving marijuana from his open trunk and subsequently exchanging it for cash with § 87(2)(b). Officer Duncan and Sergeant Bryant both stated that they could distinctly smell the odor of marijuana coming from the individuals as they were approaching them. However, Officer Little stated that he could not smell marijuana coming from the individuals.

Officer Duncan and Sgt. Bryant did not remember searching nor observing anyone search the car. Officer Little stated that the car was indeed searched, resulting in marijuana being recovered.

According to People v. Valette, 2011 NY Slip Op 6947 (1<sup>st</sup> Dept. – 1990), officers are warranted in searching a vehicle, under the automobile exception, when probable cause is found, which includes smelling the odor of marijuana (encl. A3-A4).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

**Allegation C – Abuse of Authority: En route to the 46<sup>th</sup> Precinct stationhouse, Officer Elisha Duncan threatened to arrest § 87(2)(b)**

**Allegation D – Discourtesy: En route to the 46<sup>th</sup> Precinct stationhouse, Sergeant Francis Bryant spoke rudely to § 87(2)(b)**

**Allegation F – Discourtesy: At the 46<sup>th</sup> Precinct stationhouse, Officer Elisha Duncan spoke rudely to § 87(2)(b)**

§ 87(2)(b) alleged that while he was being transported to the 46<sup>th</sup> Precinct stationhouse, Officer Duncan stated that he would arrest him every time he sees him. § 87(2)(b) also alleged that Sergeant Bryant stated, in reference to his wife, “I’m going to fuck her,” and, “You know my dick is bigger than yours.”

§ 87(2)(b) further alleged that he was taken to a holding cell inside the stationhouse, and that at some point, Officer Duncan approached him and said, “I’m going to be a fucking ass.”

Neither Officer Duncan nor Sergeant Bryant remembered transporting § 87(2)(b) to the stationhouse. Both Officer Duncan and Sergeant Bryant denied making the aforementioned

statements, or hearing any officers make them, at any point during the incident. Officer Little stated that he and Officer Duncan transported one of the individuals to the stationhouse, but he did not remember which one. Officer Little denied hearing Officer Duncan and Sergeant Bryant make those statements.

§ 87(2)(g)

**Allegation E – Abuse of Authority: At the 46<sup>th</sup> Precinct stationhouse, Sergeant Francis Bryant authorized the strip-search of § 87(2)(b)**

It is undisputed that marijuana was found at the arrest location and that Sergeant Bryant authorized the strip-search of § 87(2)(b) which was performed by Officer Duncan.

Officer Duncan stated that he observed § 87(2)(b) reaching into his trunk, retrieving a small object which he identified as being marijuana, and exchanging it with § 87(2)(b) for cash.

By § 87(2)(b)'s own admission, his trunk contained marijuana in plain view at the time of his arrest.

While at the 46<sup>th</sup> Precinct stationhouse, an inventory of § 87(2)(b)'s car resulted in additional marijuana being found in the trunk of the car.

Officer Duncan stated that he could still smell a strong odor of marijuana emanating from § 87(2)(b) after he had already been searched twice, which caused him to suspect he may be concealing marijuana on his person.

Sergeant Bryant stated he authorized the strip-search of § 87(2)(b) because Officer Duncan had informed him that § 87(2)(b) still smelled like marijuana after having been searched, which made him believe that he was concealing additional marijuana on his person. Sergeant Bryant did not remember observing § 87(2)(b) attempt to conceal anything on his person at any point during the incident.

According to People v. Hall, 10 N.Y.3d 303, strip-searches are warranted when officers have a “specific, articulate factual basis supporting a reasonable suspicion to believe the arrestee secreted contraband,” or evidence, “underneath his clothing and possibly in his body” (encl. A5-A16).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Team:   3

Investigator: \_\_\_\_\_ Keyne Jean Villert 06/21/2013  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date